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May 21, 1997

The Honorable John D. Dingell, Ranking Member
Commerce Committee Democratic Office
564 Ford House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Senator Dingell:

Thank you for the opportunity to provide our thoughts on the need for federal legislation to allow all customers to choose their electricity provider and on what that legislation should entail. Below are the answers to the questions posed in your April 10 letter:

Question 1: Is it necessary for Congress to enact legislation bearing on retail competition and why? Outline which issues should be addressed and how they should be resolved.

We believe that it will be necessary for Congress, sooner or later, to enact legislation to restructure the electric industry to allow every customer a choice of energy provider. The goal of federal legislation should be to eliminate all barriers to interstate commerce for electricity. There are many political and technical issues that are interstate in nature and will therefore not be resolved, and could even be worsened, through piece-meal state-by-state legislative and regulatory action. Thus, we believe sooner is better as it relates to this legislation. Federal legislation should address the following issues for the generation, transmission and retail sales portions of the electric industry:

- a) Federal legislation should mandate a date certain for retail competition. No customers should be denied the benefits of customer choice - lower prices and better service. Even consumers in Wisconsin, a low-cost state, will benefit by retail electricity competition.
- b) Federal legislation should recognize that the retail electricity sales market is a national market and should therefore include rules for competitors in that market including standard rules for qualification/certification to enter the business and standards of conduct for retail sales affiliates of electric utilities. Many competitors in the retail electricity sales market will either be regional or national in scope. Allowing states to develop their own rules and standards for this market could result in conflicting rules which would restrict interstate commerce. The states should enforce these rules and standards.

- c) Federal legislation should open to competition not only the retail electricity marketplace but also the generation marketplace. Effective competition cannot occur unless there is an adequate number of buyers *and* sellers. Federal legislation should ensure that **all** generation is financially deregulated (including generation currently owned by cooperatives, municipalities and power marketing administrations), is allowed to sell into the competitive electricity marketplace, is governed by the same tax rules and that there is ease of entry into the marketplace (which means state determination of need is eliminated).
- d) Federal legislation should address the issue of stranded cost recovery. Stranded cost recovery not only rewards high-cost utilities and penalizes low-cost utilities but also delays the time when customers receive the full benefits of competitive markets. However, if federal legislation does allow for stranded cost recovery, the legislation must provide clear, specific directions to the states on the principles for stranded cost recovery. These principles should include:
- the method of recovery (access fee, on distribution lines)
 - the time frame for recovery including a sunset provision by which reasonable stranded costs must be recovered. (no more than 5 years)
 - the guidelines states must follow to determine the amount of reasonable stranded cost. We favor a market-based approach to stranded cost recovery. Utilities desiring stranded cost recovery should be required to auction the stranded assets to the highest bidder. The difference between the auction price or what the market will pay for the assets and their depreciated book value determines the maximum amount of costs the utility can recover. Assets valued above market should be included in any overall valuation.
- e) Federal legislation should clarify the jurisdiction between FERC and the state public utility commissions. We believe Congress should broaden FERC authority (through the Federal Power Act) to give FERC complete jurisdiction over all transmission facilities in the country (including those facilities currently owned by cooperatives, municipalities and power marketing administrations). Complete FERC jurisdiction over transmission will facilitate the formation of competitive generation and retail markets. Allowing states to have some jurisdiction over transmission gives the states the ability to deny or delay the construction of needed transmission facilities.
- f) Federal legislation should address the many issues surrounding public power. Federal legislation should:
- unbundle the generation assets of public power agencies and ensure that all generation, regardless of ownership, is governed by the same rules to ensure a competitive marketplace. If public power agencies choose to remain in the

generation business, they should not have preferential tax treatment or access to lower-cost debt than the other entities in the generation marketplace.

- Give FERC jurisdiction over public power transmission assets.
- give all customers of public power agencies the opportunity to choose alternate providers.
- ensure that if public power agencies wish to compete in the competitive retail electricity business, the business is governed by the same rules as others in that market.

Federal legislation does not need to address the local distribution facilities of public power agencies. It often costs more to distribute energy to rural customers, so it makes sense to include subsidies in local distribution fees. Subsidized local distribution fees will not distort the competitive retail and generation marketplaces.

- g) Federal legislation must repeal PUHCA and PURPA. Current contracts under PURPA should be treated as other stranded costs if the price of electricity under the contracts is greater than the market price of electricity. Immediate repeal of PUHCA and PURPA on a prospective basis is preferred over linking repeal with restructuring because immediate repeal will facilitate formation of competitive markets.
- h) Federal legislation should **not** be linked with changes to environmental regulations. Changes to environmental regulations should occur under revisions to the Clean Air Act.
- i) Federal legislation should examine the federal tax code and make any revisions necessary to ensure all entities in the competitive generation and retail markets are affected by the same tax rules. Federal legislation should also mandate that the states examine their own tax situations to ensure competitive generation and retail entities are neither advantaged or disadvantaged through tax treatment. Federal legislation should include principles for collecting taxes on a competitively neutral basis (if the states wish to continue collecting taxes on electricity) such as removing gross receipts taxes and substituting sales or excise taxes collected through distribution fees.
- j) Federal legislation should ensure that the rules of NERC and the Regional Reliability Councils are obligatory on all users of the transmission network to ensure system reliability. This can be accomplished by mandating that all transmission facilities are under FERC jurisdiction and by broadening FERC authority to not only create and enforce commercial rules but also mandate ISO participation. NERC authority would be provided through FERC approval of ISO contracts and tariff terms. Attached to this letter is a letter Wisconsin Energy sent to Dr. Philip Sharp, the leader of the DOE Reliability Task Force, discussing in more detail our views regarding reliability in the bulk power network.

- k) Federal legislation should **not** mandate divestiture of assets but should instead eliminate barriers to interstate commerce and ensure that all entities operating in the competitive generation and retail markets abide by the same rules. It is impossible to model or predict what competitive markets will look like after restructuring. Mandating divestiture attempts to solve problems anticipated in competitive markets that may never surface, or mandating divestiture may actually serve to create problems in competitive markets.
- l) Federal legislation should require those states that have already restructured to show how their plans comply with the federal legislation. Grandfathering existing state restructuring plans without regards to how they impact interstate commerce could impede formation of competitive markets.

Question 2: If the state you serve has adopted or is considering adopting retail competition, what are your biggest concerns?

The Public Service Commission of Wisconsin has adopted a 32-step plan to resolve the various technical and political issues to allow all Wisconsin consumers to choose their electricity supplier. The current schedule has the 32-step plan completed by the end of 2001. Our biggest concern with the Wisconsin process is that the issues are only addressed in the context of the state when many of the issues are interstate in nature. For example, Wisconsin intends to develop a state-wide ISO when ISOs, by their very nature, cross state boundaries. We are even more convinced, after participating in the Wisconsin restructuring process, that federal legislation is needed to provide guidance to the states to resolve interstate issues.

Question 3: Please indicate your position of the following issues:

a. *Federal mandate requiring states to adopt retail competition by a date certain.* As explained above, we believe this is an essential component of federal legislation. Congress should mandate a date certain to ensure states progress towards ensuring retail competition or else other concerns of state commissions and legislators may take priority over electric restructuring.

b. *Recovery of stranded investment.* Wisconsin will investigate stranded cost calculation and recovery mechanisms as part of its 32-step process. We addressed stranded cost recovery in general in Question 1 above. We don't believe securitization is the proper mechanism for dealing with stranded costs. Securitization requires an up-front calculation of market value of assets and up-front collection of the difference between market value and book value of assets from customers. Even if customers are guaranteed a refund if utilities over-collect the amount of stranded cost, the utility still gets a substantial amount of up-front money to use as it sees fit.

c. *Reciprocity* Reciprocity conditions cannot be made to work. State legislatures can mandate that no retail affiliates of utilities can supply their consumers unless the retail markets in those states were also open to competition, but this does not prohibit national power marketers unaffiliated with utilities from serving their consumers. Therefore, federal legislation should not include any type of reciprocity language.

Question 4: Should Congress mandate unbundling of local distribution company services? Congress should mandate “unbundling” of local distribution company services by clearly separating the parts of the competitive interstate retail electricity market (buying and selling the electricity commodity, billing and the provision of value-added products and service such as advanced metering, home automation, etc.) from the local distribution business which will remain state PUC-regulated. Mandating this separation at the federal level avoids multiple interpretation of the separation at the state level which will impede formation of competitive markets.

Question 5: Should Congress authorize FERC to enforce compliance with NERC standards to help maintain system reliability?
We addressed this issue in Question 1 above.

Question 6: What concerns does your company have with respect to the role of public power?
We addressed public power concerns in Question 1 above. The goal of federal legislation as it relates to public power should be to clearly separate the competitive parts of the business (generation and retail sales) and ensure all competitors in these businesses are governed by the same rules. The local distribution facilities of public power will remain regulated, so continuing subsidies as part of distribution access fees will not distort competitive market formation or development.

Question 7: Should changes be made to federal, state or local tax codes?
We addressed tax issues in Question 1 above.

Question 8: What concerns do you have about the reliability of the electric system? Will there be adequate reserves with retail competition?
We addressed reliability issues in Question 1 above. All users of the transmission system must submit to the authority of the ISOs under the same rules to ensure system reliability. The rules of NERC must be obligatory on all users of the network. These rules must include the imposition of penalties for non-performance built into FERC-approved tariffs. Adequate reserves can be ensured by mandating that load-serving entities (utilities before retail competition and retailers after retail competition) are contractually responsible for

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securing adequate reserves for their customers. The transmission system is capable of handling full retail competition if the changes discussed above are implemented.

I appreciate the opportunity to provide our thoughts on electric industry restructuring and the role of federal legislation to remove barriers to allow competitive markets in generation and retail electricity sales to flourish. Please feel free to contact me at (414) 221-2118 or Dale Landgren, Director of Business Planning at (414) 221-2521 if you would like further clarification of the above thoughts or to discuss other issues.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R. Abdoo', written in a cursive style.

Richard A. Abdoo
Chairman of the Board,
President and
Chief Executive Officer

Attachment

cc: A.M. Brady
J. Delgado
D. Landgren